(6) Whether any such owner or owners have previously made an election under section 121(a), the date of such election, the taxable year with respect to which such election was made, the district director with whom such election was filed, and, if such election has been revoked, the date of such revocation.

(c) *Manner of revoking election.* The revocation of an election under section 121(a) shall be made by the taxpayer by filing a signed statement showing his name and social security number and indicating that the taxpayer revokes the election he made under section 121(a). The statement shall also show the taxable year of the taxpayer for which such election was made. The statement shall be signed by the taxpayer and (where required) by his spouse or their personal representatives and filed with either the Internal Revenue Service Center with which the election was filed, the Internal Revenue Service Center nearest the taxpayer at the time the statement is filed, or the taxpayer's local Internal Revenue office. In addition, if, at the time the statement is filed, the statutory period for assessment of a deficiency for the taxable year for which the election was made will expire within one year, then, the revocation is not effective unless the taxpayer also consents, in writing, that the statutory period for assessment of any deficiency (to the extent that such deficiency is attributable to the revocation of the election) shall not expire before the expiration of one year after the date the statement was filed with the district director. Such consent must be filed prior to the date of the expiration of the statutory period for assessment for the taxable year for which the election was made.

(Secs. 194 (94 Stat. 1989; 26 U.S.C. 194) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954))

[T.D. 7614, 44 FR 24840, Apr. 27, 1979, as amended by T.D. 7927, 48 FR 55849, Dec. 16, 1983]

§ 1.121–5 Special rules.

(a) *Property held jointly by husband and wife.* (1) If—

(i) On the date of the sale or exchange of a residence, such residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(ii) A joint return under section 6013 is made by such husband and wife for the taxable year in which the residence is sold or exchanged, and

(iii) One spouse satisfies the age, ownership, and use requirements of section 121(a),

then both the husband and wife are treated as satisfying the age, ownership, and use requirements of section 121(a). Thus, if the above conditions exist and one spouse meets all the requirements of section 121(a), the other spouse will be treated as meeting all such requirements.

(2) The provisions of this paragraph are illustrated by the following example:

Example. On January 1, 1979, A and B while married, sell their jointly owned residence which they have owned and used as their prinicipal residence continuously since 1968. At the time of the sale, A is age 56 and B is age 54. If A and B file a joint return for the year of the sale, B will be considered to have satisfied the age, ownership and use requirements of section 121(a) since A has satisfied such requirements.

(b) *Property of deceased spouse.* (1) A taxpayer is treated as satisfying the ownership and use requirements of section 121(a)(2) with respect to property if—

(i) His spouse is deceased on the date of the sale or exchange of such property, and

(ii) Such deceased spouse, had, during the 5-year period ending on the date of the sale or exchange of the property, satisfied such ownership and use requirements with respect to such property.

This rule, however, has no application if the surviving spouse is married at the time of the sale or exchange of such property, or if an election made by the deceased spouse under section 121(a) is in effect with respect to any other sale or exchange.

(2) The provisions of this paragraph are illustrated by the following example:

Example. H and W become husband and wife on January 1, 1979. On and after such date

they use as their principal residence property which H has owned and used as his principal residence since January 1, 1967. H dies on January 1, 1981, and W inherits the property and continues to use the property as her principal residence. W sells the property on August 31, 1981, at which time she is over 55 and not married. H, during the 5-year period ending on the date of the sale (September 1, 1976, through August 31, 1981), satisfied the 3-year use and ownership requirements of section 121(a)(2) with respect to such property. Accordingly, W may make an election under section 121(a).

(c) *Tenant-stockholder in cooperative housing corporation.* An individual who holds stock as a ''tenant-stockholder'' in a ''cooperative housing corporation'', as those terms are defined in section 216(b), may be eligible to make an election under section 121(a) in respect of the sale or exchange of such stock. In determining whether the taxpayer meets the requirements of section 121(a), the ownership requirements of such section are applied to the holding of such stock and the use requirements of such section are applied to the house or apartment which the individual was entitled to occupy because of such stock ownership.

(d) *Tacking of holding periods in the case of involuntary conversion.* If the basis of the property sold or exchanged is determined (in whole or in part) under subsection (b) of section 1033 (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

For the treatment of involuntary conversion as a ''sale or exchange'' see section 1.121–3(b).

(e) *Property used in part as principal residence.* (1) When a taxpayer can satisfy the ownership and use requirements of section 121(a)(2) only with respect to a portion of the property sold, then section 121 shall apply only with respect to so much of the gain from the sale or exchange of the property as is attributable to such portion. Thus, if the residence was used only partially for residential purposes, only that part of the gain allocable to the residential portion is not to be recognized under section 121(a).

(2) The provisions of this paragraph are illustrated by the following example:

Example. Taxpayer A, an attorney, uses a portion of the property constituting his principal residence as a law office for a period in excess of 2 years out of the 5 years preceding the sale of such residence. Accordingly, section 121 does not apply with respect to so much of the gain on the sale of the property as is allocable to the portion of the property used as a law office.

(f) *Determination of marital status.* Marital status is to be determined as of the date of the sale or exchange of the residence. An individual who on the date of the sale or exchange is legally separated from his spouse under a decree of divorce or of separate maintenance is not considered as married on such date.

(g) *Application of sections 1033 and 1034.* (1) In applying sections 1033 (relating to involuntary conversions) and 1034 (relating to sale or exchange of residence), the amount realized from the sale or exchange of property used as one's principal residence is treated as being the amount determined without regard to section 121, reduced by the amount of gain excluded from gross income pursuant to an election made under section 121(a). Thus, the amount which must be invested in a new residence in order to fully satisfy the nonrecognition provisions of section 1033 or 1034 is reduced by the amount of gain not included in the taxpayer's gross income because of an election made under section 121(a).

(2) The provisions of this paragraph are illustrated by the following examples:

Example (1). Taxpayer A sells his residence for $180,000, incurring $2,000 in fixing-up expenses described in section 1034(b)(2). He has a basis of $65,000 for the residence. Of his total gain of $115,000 ($180,000–$65,000), $100,000 is excluded from his gross income under this section.

He may still use the provisions of section 1034 to defer all or part of the remaining $15,000 of gain. To determine the adjusted sales price for purposes of section 1034, the amount realized (consideration received minus selling expenses, described in paragraph (b)(4)(i) of section 1.1034–1) is reduced by the sum of the fixing-up expenses (described in paragraph (b)(6) of section 1.1034–1) plus the amount excluded under section 121. Here, then, for purposes of section 1034, A's

adjusted sales price is $78,000 (($180,000—$2,000)—$100,000)). If his new residence costs at least $78,000, all $15,000 of the remaining gain will be deferred. However, if he purchases a new residence for $72,000, then $6,000 ($78,000—$72,000) of his gain is currently taxable.

Example (2). Taxpayer B's residence has a basis of $65,000. She sells the residence for $115,000. If she makes an election under section 121(a), her gain of $50,000 is all excluded from gross income, and, accordingly, no portion of the realized gain remains to be deferred under section 1034.

(h) *Special rules applicable to certain reacquisitions of real property.* For special rules relating to a case where real property with respect to which an election under this section is in effect is reacquired by the seller in partial or full satisfaction of the indebtedness arising from the sale of such property and resold by him within 1 year after the date of such reacquisition, §1.1038–2.

[T.D. 7614, 44 FR 24841, Apr. 27, 1979]

§ 1.122–1 Applicable rules relating to certain reduced uniformed services retirement pay.

(a) *Rule applicable prior to January 1, 1966.* In the case of a member or former member of the uniformed services of the United States (as defined in 37 U.S.C. 101(3)) who has made an election under Subchapter I of Chapter 73 of Title 10 of the U.S. Code (also referred to in this section as the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431)) to receive a reduced amount of retired or retainer pay, gross income shall include the amount of any reduction made in his retired or retainer pay before January 1, 1966, by reason of such election, unless such reduction, or portion thereof, is otherwise excluded from gross income under Part III of Subchapter B of Chapter 1 of the Internal Revenue Code of 1954 or any other provision of law.

(b) *Rule applicable after December 31, 1965*—(1) In a case of a member or former member of the uniformed services of the United States (as defined in 37 U.S.C. 101(3)), gross income shall not include the amount of any reduction made in his or her retired or retainer pay after December 31, 1965, by reason of—

(i) An election made under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431), or

(ii) The provisions of Subchapter II of Chapter 73 of Title 10 of the U.S. Code (also referred to in this section as the Survivor Benefit Plan (10 U.S.C. 1447)).

(2)(i) In a case where a member or former member of the uniformed services has, pursuant to the election described in paragraph (a) of this section, received before January 1, 1966, a reduced amount of retired or retainer pay, he shall, after December 31, 1965, exclude from gross income under section 122(b) and this subdivision all amounts received as uniformed services retired or retainer pay until there has been so excluded an amount of retired or retainer pay equal to the ''consideration for the contract'' (as described in subdivision (iii) of this subparagraph).

(ii) Upon the death of a member or former member of the uniformed services, where the ''consideration for the contract'' (as described in subdivision (iii) of this subparagraph) has not been excluded in whole or in part from gross income under section 122(b) and subdivision (i) of this subparagraph, the survivor of such member who is receiving an annuity under Chapter 73 of Title 10 of the U.S. Code shall, after December 31, 1965, exclude from gross income under section 72(o) and this subdivision such annuity payments received after December 31, 1965, until there has been so excluded annuity payments equalling the portion of the ''consideration for the contract'' not previously excluded under subdivision (i) of this subparagraph.

(iii) The term ''consideration for the contract'' as used in this subparagraph means—

(a) The total amount of the reductions, if any, before January 1, 1966, in retired or retainer pay by reason of an election under Subchapter I of Chapter 73 of Title 10 of the United States Code, plus

(b) The total amount, if any, deposited by the serviceman at any time pursuant to the provisions of sections 1438 or 1452(d) of Title 10 of the United States Code, plus

(c) The total amount, if any, excludable from income under section